

### Conclusion

The circumstances of this case warrant reversal of the decision of the Court of Appeals for the Tenth Circuit on the ground that the predicate for the admission of the transcript of testimony at the preliminary hearing was insufficient, and that, therefore, the right of confrontation guaranteed by the Sixth Amendment was denied Petitioner by virtue of the admission of that testimony. To sanction the casual approach to unavailability of witnesses adopted by the Court of Appeals for the Tenth Circuit is to permit the state to arrogate to itself the determination of the criterion under which testimony at a preliminary hearing may be introduced at trial. This is not the direction of *Pointer v. Texas*, *supra*, nor of *Davis v. Alabama*, *supra*, and it is submitted that such a restriction upon the right of confrontation would render the right meaningless.

While no lower federal court has passed upon the question of denial of assistance of counsel in this case, the facts set forth in Appendix A so cloud the representation of Petitioner by Mr. Parks that, at the very least, the Circuit should remand the case for hearing as to all of the circumstances surrounding the withdrawal of Mr. Parks, and the failure to examine Woods at the preliminary hearing.

Respectfully submitted,

Ina C. Retherman, Jr.

Counsel for Petitioner

2910 Security Life Building

Denver, Colorado 80202

January 12, 1968

**APPENDIX A**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA  
CLERK'S OFFICE  
UNITED STATES COURT HOUSE  
POST OFFICE BOX 1866  
TULSA, OKLAHOMA 74103**

**NOBLE C. HOOD  
CLERK**

September 6, 1967

**Mr. Jack Allen Barber, 67027  
Oklahoma State Penitentiary  
P. O. Box 97  
McAlester, Oklahoma 74501**

**Re: Cr. No. 13,744—USA v. Charles H. Woods  
Cr. No. 13,745—USA v. Charles H. Woods  
Cr. No. 13,746—USA v. Charles H. Woods**

**Dear Sir:**

Pursuant to your request of 9-3-67, I find the above cases, wherein the defendant, Charles Henry Woods, was indicted in this court on 9-7-61, and represented by Ed Parks, attorney.

The record reflects that the defendant appeared in court with counsel on 9-14-61 and entered his pleas of not guilty, and again, on 10-5-61, at which time he withdrew his plea of not guilty and entered a plea of guilty in case Nos. 13,744 and 13,745.

He again appeared in court on 10-6-61 with counsel, at which time sentence was imposed in the two numbered cases, and case No. 13,746 was dismissed on motion of the government.

Yours truly,

/s/ **M. M. EWING**  
Chief Deputy Clerk